

**CONTRACT NO. 212729**  
**SERVICE CONTRACT**

THIS CONTRACT, effective as of the date of the last signatory, is made and entered into by and between the County of Kaua'i, whose mailing address is 4444 Rice Street, Līhu'e, Hawai'i 96766 (hereinafter the "County") and the State of Hawai'i, Department of Labor and Industrial Relations, a government entity under the laws of the State of Hawai'i, whose principle mailing address is 830 Punchbowl Street, Room 329, Honolulu HI 96813 (hereinafter the "Contractor").

RECITALS

THIS CONTRACT for services has been procured under:

- Hawai'i Revised Statutes ("HRS") §103D-102 (b)(2)(G); §3-120-4, Exhibit A exemption 2020-EX-36, Hawai'i Administrative Rules ("HAR") (Exempt Procurement No. [Click here to enter text.](#))
- HRS §103D-302 (Competitive Sealed Bidding)
- HRS §103D-303 (Competitive Sealed Proposals)
- HRS §103D-305 (Small Purchase)
- HRS §103D-306; HAR 3-122-81(c) (approved for Sole Source procurement [Click here to enter text.](#), Sole Source Procurement No. [Click here to enter text.](#))
- HRS §103D-307 (Emergency Procurement No. [Click here to enter text.](#))

WHEREAS, Federal funding in the amount of \$107,332.00, as allocated by the State, is available to fund this Contract pursuant to the Workforce Innovation and Opportunity Act of 2014 (WIOA); and

WHEREAS, the Contractor is able and qualified to provide such service as required in this Contract (hereinafter the "Services").

NOW THEREFORE, the County and Contractor, in consideration of the mutual promises, consideration, and understandings hereinafter set forth, hereby agree as follows:

1. **Scope of Work.** The Contractor agrees to sell, furnish, deliver, and/or install the Services, as more specifically described in Exhibit A, attached hereto and incorporated herein, complete and in new condition, free of all liens, claims, and any encumbrances whatsoever, in accordance and in strict compliance with the following documents:
  - a. ☐ Specifications;
  - b. ☐ Invitation for Bids Document No. [Click here to enter text.](#) and all Addenda thereto;
  - c. ☐ Request for Proposals Project No. [Click here to enter text.](#) and all Addenda thereto;
  - d. ☐ Bid (including pricing inputs)/Proposal/Best and Final Offer;
  - e. ☐ Questionnaire;

- f. ☒ Special Provisions;
- g. ☐ General Terms and Conditions for Goods and Services of the County of Kaua'i dated July 2016 (hereinafter "General Terms"),
- h. ☒ Other: Exhibit C — Compensation and Payment Schedule; Exhibit D — General Terms and Conditions; Exhibit E — Special Conditions for the WIOA,

and those other documents attached or referred to therein, relating to the Services (hereinafter collectively referred to as "Contract Documents"). The Contractor understands and agrees that the Contract Documents including, but not limited to, those referenced in but not attached to this Contract and those referenced in but not attached to the Contract Documents, are hereby incorporated by reference into this Contract. The Contractor acknowledges and admits receipt of all Contract Documents, and acknowledges that it has reviewed, understands, and agrees with all terms and conditions in the Contract Documents and those other documents, terms and conditions referenced therein.

## 2. Time of Performance.

- a. The Contractor agrees to provide the Services as specified in Exhibit A. The total term of this Contract shall begin from and including the commencement date as specified in the written Notice to Proceed which may be as soon as July 1, 2020, for a period of up to One (1) CALENDAR YEAR to and including June 30, 2021.
- b. ☐ Multi-Term Contract: Funds are available and appropriated only for the first fiscal year of the contract. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds. The contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the initial fiscal year. In this event, the contract shall automatically terminate at the end of the fiscal year for which funds have been appropriated. In the event the contract is cancelled because funds are not appropriated or otherwise made available to support the continuation of the contract after the first fiscal year, no breach of contract shall be deemed to have occurred as a result of this termination, which shall be considered as a normal termination of the contract, provided that the contractor shall be reimbursed for its unamortized, reasonably incurred, nonrecurring costs. The County will notify the Contractor on a timely basis regarding the availability of funds for the continuation of the contract for each succeeding year.
- c. ☐ Extension of Time: Any extensions of this Contract must be by written amendment to this Contract and may occur on a month to month basis, or by terms thereof, not to exceed a total of [Click here to enter text.](#) months. Any extension of this Contract is subject to the availability of funds and will be at the same contract unit prices and under the same terms and conditions as specified in the Contract Documents.

- 3. Compensation. For and in consideration of the Contractor's full and faithful performance of this Contract required to be performed under the Contract Documents, the County hereby agrees to pay the Contractor the total maximum sum of **ONE HUNDRED SEVEN, THREE HUNDRED THIRTY TWO AND NO/100 DOLLARS (\$107,332.00)**, federal,

state, and local taxes included, in lawful money of the United States of America. The Contractor understands and agrees that payment shall be made in the manner and at the times specified in the Contract Documents, and shall also be subject to and conditioned upon such additions to or deductions from the preceding sum as may herein be made, according to the Contract Documents.

- a. Cost and/or Pricing: If this Contract required Cost and/or Pricing data, the Contractor understands and agrees that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that the price was increased because the Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

4. **Liquidated Damages.** This section is deleted, not applicable.

5. **Insurance.**

- a. Contractor shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the Contract insurance coverages, limits, including endorsements as described in Exhibit B, incorporated herein, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

- b. NOT APPLICABLE

6. **Bonds.** This section is deleted, not applicable.

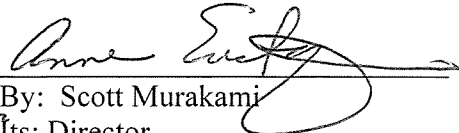
7. **Officer in Charge.** The Officer in Charge and contact for the delivery of the Services is:

Daniel Fort  
Executive Director/Kauai Workforce Development Board  
4444 Rice St. Suite 200, Līhu'e, Hawai'i 96766  
dfort@kauai.gov  
WIOA (2014) Adult and Dislocated Services

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This agreement will become effective when all signatories below have signed it. The date of this agreement will be the date this agreement is signed by the last signatory to sign it (as indicated by the date associated with that signatory's signature).

State of Hawai'i, Department of Labor and Industrial Relations

  
By: Scott Murakami  
Its: Director


7/24/20  
Date

RECOMMENDED FOR APPROVAL

  
Nalani Brun (Aug 11, 2020 08:31 HST)  
OED/Nalani Brun, Director


\_\_\_\_\_  
Date

APPROVED AS TO FORM  
AND LEGALITY

  
\_\_\_\_\_  
Deputy County Attorney  
Todd Karl Jensen

\_\_\_\_\_  
Date

COUNTY OF KAUAI

  
Reiko Matsuyama (Aug 11, 2020 08:53 HST)  
\_\_\_\_\_  
Director of Finance  
Reiko Matsuyama

\_\_\_\_\_  
Date

## **EXHIBIT A SERVICES DETAILS**

### **Introduction**

Under the federal Workforce Innovation & Opportunity Act (WIOA), the County of Kauai (“County”) and its Local Workforce Development Board (LWDB)<sup>1</sup>, established as required under WIOA, are required to develop and implement a workforce investment system to deliver a coordinated array of employment and training services to WIOA participants at one physical location called a OneStop Center.

The One-Stop Job Center is operated by the County of Kaua‘i, selected by the Local Workforce Development Board, One Stop Operator and required mandated and core partners. The One-Stop Job Center is currently located at:

Department of Labor and Industrial Relations  
Workforce Development Division / *American Job Center-Hawaii*  
4444 Rice Street  
Suite 302  
Lihue, Hawaii 96766

The Department of Labor and Industrial Relations (“DLIR”), as the Contractor in this Contract, agrees to provide the following services, which are summarized below and described more specifically thereafter:

- A. Service Provider;
- B. Financial Management and Support;
- C. Performance Accountability.

Generally, the purposes of WIOA are: 1) To give individuals, and in particular those with barriers to employment, access to and opportunities for the employment, education, training, and support services they need to succeed in the labor market, 2) To support the alignment of workforce investment, education, and economic development systems, 3) To improve the quality of the labor market by providing America's workers with the skills and credentials necessary to secure family sustaining wages and to provide employers with the skilled workers necessary to succeed in a global economy, 4) To better address the employment and skill needs of workers, jobseekers, and employers, 5) For purposes of Title I of the WIOA, to provide workforce investment activities, through statewide and local workforce development systems, that increase the employment, retention, and earnings of participants, and increase attainment of recognized post-secondary credentials by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic

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<sup>1</sup> The responsibilities of the LWDB described in the Contract are required under WIOA 2014.

self-sufficiency, meet the skill requirements of employers, and enhance the productivity and competitiveness of Hawaii's labor force, which in turn will strengthen the country's economy.

The Contractor shall provide the services as set forth below:

**A. Statutory and Regulatory Requirements:**

The Contractor shall comply with the Cost Principles for Purchases of Health and Human Services set forth in HRS Chapter I03F and Federal regulations, including, but not limited to, 2 C.F.R. Part 200 and 2 C.F.R. Part 2900, which are not attached hereto but are incorporated and made a part of this Agreement. The Contractor shall ensure that such services shall be in accordance with the WIOA (Public Law 113-128) and its Regulations at 20 C.F.R. Parts 676,677,678, 603, 651-654, 658, 675, 679-688 effective October 18, 2016, as amended, any other regulations issued relating to WIOA, and applicable Federal and State laws, regulations, policies and instructions.

If the Contractor subcontracts any part of this Contract to a commercial organization, the subcontractor shall follow the regulations in 48 C.F.R. Part 31.

**B. Required Local Employment and Training Activities:**

1. **One-Stop Delivery System:** The Contractor will collaborate with the local board to establish a one-stop delivery system with at least one physical one-stop center, which provides adults and dislocated workers access to programs and services of one-stop partners.

The Contractor shall ensure that: a) career and training services are available to adults and dislocated workers through the one-stop delivery system, b) a memorandum of understanding relating to the operation of the one-stop delivery system is made between the local board and the one-stop partners and, c) a portion of the funds for the program and activities authorized under Title I and other parts of WIOA will be used to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop center(s).

2. **Career Services for Adults and Dislocated Workers:**

The Contractor shall provide career services to adults and dislocated workers through the one-stop center(s), which services shall include, at a minimum:

- a) Determination of the adults and dislocated worker's eligibility for WIOA services;
- b) Outreach, intake and orientation to the information and other services available through the one-stop delivery system;
- c) Initial assessment of skill levels (including literacy, numeracy, and English language proficiency), aptitudes, abilities (including skills gaps), and supportive service needs;
- d) Labor exchange services, including:
  - i) job search and placement assistance, and where appropriate, career counseling that includes provision of information on in-demand industry sectors and occupations, and
  - ii) provision of information on nontraditional employment, and appropriate recruitment and other business services on behalf of employers, including small employers in the county;
- e) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, in appropriate cases, other workforce development programs;
- f) Provision of workforce and labor market statistics information, including accurate information relating to the local, regional, and national labor market areas such as job vacancy listings, information on job skills necessary to obtain jobs, occupations in demand and the earning and skill requirements for demand occupations, and opportunities for advancement for such occupations;
- g) Provision of information regarding performance and cost for eligible providers of training services including providers of adult education services, post-secondary vocational education services and vocational rehabilitation services;
- h) Provision of information, in formats that are usable by and understandable to one-stop center customers regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area;
- i) Provision of information, in formats that are usable and understandable to one-stop center customers relating to the availability of supportive services or assistance, including child care, medical or child health assistance, benefits under the supplemental nutrition assistance program, assistance through the earned income tax credit, and assistance under a State program for temporary assistance for needy families, and other supportive and transportation and referral to such services, as appropriate;
- j) Provision of information and assistance regarding filing claims for unemployment compensation;

- k) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not funded by WIOA;
- l) Services, if determined to be appropriate in order for an individual to obtain or retain employment, that consist of:
  - i) comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include diagnostic testing and use of other assessment tools; and in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;
  - ii) development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the individual to achieve the employment goals, including providing information on eligible providers of training services and career pathways to attain career objectives;
  - iii) group counseling;
  - iv) individual counseling;
  - v) career planning; and
  - vi) short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training;
- m) Internships and work experiences that are linked to careers;
- n) Workforce preparation activities;
- o) Financial literacy services;
- p) Out-of-area job search assistance and relocation assistance;
- q) English language acquisition and integrated education and training programs; and
- r) Follow-up services, including counseling regarding the workplace, for participants in workforce investment activities who are placed in unsubsidized employment. Such services shall be provided for not less than 12 months after the first day of employment, as appropriate.

### **3. Training Services for Adults and Dislocated Workers:**

The Contractor shall provide training services to adults and dislocated workers:

- a) who, after an interview, evaluation or assessment by a one- stop operator or a one-stop partner, have been determined to be unlikely or unable to obtain or retain employment that leads to economic self- sufficiency or wages comparable to or higher than wages from previous employment, through career services;
- b) are in need of training services to obtain or retain employment that leads to economic self- sufficiency or wages comparable to or higher than wages from previous employment;



- c) who have the skills and qualifications to successfully participate in the selected program of training services;
- d) who select programs of training services that are directly linked to employment opportunities in the County's county;
- e) who are unable to obtain other grant assistance for such services through federal Pell Grants or who require assistance beyond the assistance available under other grant assistance; and
- f) who are determined to be eligible in accordance with the priority system described in paragraph C below.

Training services shall include, but are not limited to:

- a) Occupational skills training, including training for nontraditional employment;
- b) On-the-job training;
- c) Incumbent worker training
- d) Programs that combine workplace training with related instruction, including cooperative education programs;
- e) Training programs operated by the private sector;
- f) Skill upgrading and retraining;
- g) Entrepreneurial training;
- h) Transitional jobs as described in the WIOA Regulations 20 CFR Part 680;
- i) Job readiness training provided in combination with services described in a) through h) above;
- j) Adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with the services described in a) through f) above;
- k) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training;
- l) Customer support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities; and
- m) Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the local board.

The Contractor may provide to adults and dislocated workers incumbent workers training as described in WIOA Regulations 20 CFR Parts 680 and 682.

#### **4. Linkage to Occupations In Demand:**

Training services shall be directly linked to an in-demand industry sector or occupation in the county or in another area to which an adult or dislocated worker is willing to relocate.

5. **Individual Training Accounts:**

The Contractor shall provide eligible adults and dislocated workers who need training services with Individual Training Accounts (ITAs), the maximum amounts of which are determined by the local board. The Contractor shall give adults and dislocated workers access to lists of eligible providers of training together with sufficient consumer information so that informed choices can be made. Priority consideration shall be given to programs that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations in the county.

Exceptions: The Contractor may provide training services pursuant to a contract for services in lieu of an ITA if:

- a) the consumer choice requirements, as described in the WIOA Regulations 20 CFR Part 680 are met;
- b) such services are on-the-job training, customized training, incumbent worker training, or transitional employment, as described in the WIOA Regulations 20 CFR Part 680;
- c) the local board has determined there are an insufficient number of eligible providers of training services in the County's county;
- d) the local board has determined there is a training services program of demonstrated effectiveness offered by a community-based organization or another private organization to serve individuals with barriers to employment;
- e) the local board has determined it would be most appropriate to award a contract to an institution of higher education or other eligible providers to facilitate training of multiple individuals in in-demand industries or occupations, and such contract does not limit customer choice; or
- f) the contract is a pay-for-performance contract as described in WIOA Regulations 20 CFR Part 683.

6. **Performance Accountability:**

The WDC has negotiated annual performance goals with the County and LWDB for Program Year 2018 to assess the effectiveness in achieving continuous improvement of workforce investment activities funded under the WIOA and in order to optimize the return on investment of federal funds in workforce investment activities. The County and LWDB may require the Contractor to comply with the negotiated annual performance goals. The WDC may require the County to re-negotiate annual performance goals for the local area if the WDC re-negotiates the annual performance goals with the United States Department of Labor ("USDOL"). Subsequently, the

County may require the Contractor to comply with the re-negotiated annual performance goals.

Primary indicators of performance for employment and training activities for adults and dislocated workers shall consist of:

- a) The percentage of program participants in unsubsidized employment during the second quarter after exit from the program;
- b) The percentage of program participants in unsubsidized employment during the fourth quarter after exit from the program;
- c) The median earnings of program participants in unsubsidized employment during the second quarter after exit from the program;
- d) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent during participation in or within one year after exiting the program;
- e) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and
- f) The indicators of effectiveness in serving employers:
  - i) Retention with the same employer: the percentage of participants who exit and are employed with the same employer in the second and fourth quarters after exit
  - ii) Repeat business customers: the percentage of repeat employers using services within the previous three years.
  - iii) Employer penetration rate: the percentage of employers using services out of all employers in the State.

The County and WDC may identify additional indicators of performance for employment and training activities for adults and dislocated workers as necessary.

- C. **Priority of Service:** The Contractor shall give priority to adult and dislocated worker recipients of public assistance, other low-income adults and dislocated workers, and adults and dislocated workers who are basic skills deficient for receipt of career services and training services. The Contractor shall also comply with requirements set in 20 CFR Part 1010, Application of Priority of Services for Covered Persons.

- D. **Monitoring and Evaluation:** The Contractor shall implement sufficient procedures for annually monitoring this award to ensure the proper and effective expenditure of funds and the achievement of program goals. At any time during the duration of this Contract, the Contractor shall allow the County, LWDB, WDC, and USDOL full access to any subcontractor, their records and participant information as necessary.
- E. **Data and Reporting Requirements:** In order for the County and LWDB to monitor the Contractor's compliance with this Contract, the Contractor shall submit separate program data and written monthly fiscal reports for the Adult and the Dislocated Worker Programs to the County and LWDB.
1. **Program Data:** The required program data shall be Participant Individual Record Layout, or PIRL, as revised by the USDOL, that provides a standardized set of data elements, definitions, and reporting instructions for each individual who receives WIOA Title I-B services that will be used to describe characteristics, activities, and outcomes of WIOA participants and reportable individuals. The PIRL contains a) demographic information of the adults, b) workforce investment activities in which the adults are enrolled or involved and length of time the adults are engaged in such activities, and c) outcomes for the adults, including occupation and placements in non-traditional employment. The Contractor shall enter the data for each quarter by the tenth calendar day of the month following the end of each quarter.
  2. **Fiscal Reports:** The County and LWDB will provide the Contractor with fiscal report forms that the Contractor shall complete and submit no later than thirty (30) calendar days after the end of each month. The fiscal reports of the Adult Program and the Dislocated Workers Program shall be separate for each program. These reports shall detail the uses made by the Contractor of compensation paid to it pursuant to this Contract, outline the expenditures incurred, and be certified as accurate by the Contractor.  
  
To be compliant with this reporting requirement, fiscal reports with estimated expenses may be submitted electronically or via facsimile to the County and LWDB to meet the due date. An amended report must be submitted to the County and LWDB as soon as the actual expenses become available. In addition, the Contractor shall submit a completed close-out package within sixty (60) calendar days after the expenditure of the entire awarded amount or the termination of the Agreement, whichever is sooner.
  3. **Additional Reports:** In addition to the above reports, the Contractor, upon request, must submit additional reports that the County, LWDCB, or WDC from time to time may request, and to meet with the County and LWDB

representatives to discuss the progress of the work required under this Contract.

4. **Reporting Penalty:** Should the Contractor fail to submit the program data and/or fiscal reports to the County and LWDB on or before the required dates, the County and LWDB is authorized to withhold funds owed to the Contractor until such time when the program data and/or fiscal reports are submitted and deemed acceptable by the County and LWDB.

- F. **Audit Requirement:** If the Contractor expends \$750,000.00 or more a year in federal awards it shall have a single or program-specific audit conducted for that year by an independent Certified Public Accountant to verify that its financial management system and internal control procedures are effective in meeting the terms and conditions of the Contract. The audit shall be in accordance with generally accepted auditing standards, the requirements of 2 CFR Part 200 Subpart F, and the Government Auditing Standards issued by the U.S. General Accounting Office. The audit report shall be furnished to the WDC within thirty (30) days after the report is submitted to the federal Clearinghouse in accordance with 2 CFR Part 200 Subpart F.

A reasonably proportionate share of the audit costs may be charged to the Contract only if an audit is required as stated above. Should the actual federal expenditure be less than \$750,000.00, no portion of the cost of the audit, if conducted, may be charged to this Contract.

- G. **County and LWDB Requested Modifications:** If the County and/or LWDB issues a written request to the Contractor for an Agreement modification, the Contractor shall ensure that a modification narrative as well as applicable budget documents are submitted to the County and LWDB within sixty (60) calendar days of the date of the County or LWDB's request. Should the Contractor fail to submit an acceptable modification narrative and budget documents on or before the required date, the County and LWDB is authorized to withhold funds owed to the Contractor until such time as the modification narrative and budget documents are submitted and deemed acceptable by the LWDB.
- H. **Assurances and Certifications:** By signing this Contract, the Contractor is assuring and certifying that it will fully comply with the WIOA and that it will fully comply with the laws, regulations, and other requirements set forth in the Special Conditions for the WIOA, Assurances and Certifications section:

In addition, by signing this Contract, the Contractor represents that it has provided the County and LWDB with the document entitled Assurances and Certifications sent to the Contractor by the County and LWDB, and that it signed the following certification forms attached to the Assurances and Certifications: Debarment and Suspension Certification;

Certification Regarding Lobbying; Drug Free Workplace Certification and Certification of Non-Delinquency.

**EXHIBIT C**  
**COMPENSATION AND PAYMENT SCHEDULE**

The County agrees to pay the Contractor, for services satisfactorily performed under this Contract, a sum not to exceed the following amounts for each program and for administration of these programs as set forth in the Budget Information Summary:

|                   |                     |
|-------------------|---------------------|
| Adult Program     | \$ 65,663.00        |
| Dislocated Worker | <u>\$ 41,659.00</u> |
| Total             | \$ 107,322.00       |

This budget, which sum is allocated for the purpose of this Contract in accordance with the Cost Principles for Purchases of Health and Human Services; Chapter 103D, HRS; applicable federal cost principles listed in 2 C.F.R. Part 200 and the OMB Circular A-87; and the provisions of the Financial Management Manual (FMM), as updated and issued by the State.

Payments shall be made to the Contractor monthly. The County will only make payments upon:

1. The Contractor's submission of an invoice on which Contractor certifies that the services provided are consistent with the Contract, and the invoice is signed by the Contractor's authorized signatory or authorized representative.
2. If the County and the Contractor have more than one Contract in effect at the time of invoice submission, the Contractor shall specify on the invoice from what Contract and/or source of funds the Contractor is requesting payment.
3. The Contractor having submitted the required monthly fiscal reports as specified in the Contract and the Scope of Services (Exhibit A).

The County shall review the fiscal reports to preliminarily determine the appropriateness and allowability of the reported expenditures for which payment has been requested. The County's preliminary determination of appropriateness and allowability of the reported expenditures shall be subject to later verification, subsequent monitoring, audit, investigation and/or examination.

If the County's later review reveals that expenditures are inappropriate and/or unallowable, the County may deduct the amount of expenditures from any payable installment, require that the amount of expenditures be refunded to the County, or a combination of both methods. If the County's investigation and examination reveal expenditures that are determined by the County to be inappropriate and unallowable after payment of the last installment, the County may require that an equivalent amount of monies be refunded to the County.

If the United States Department of Labor ("USDOL") or other Federal agencies, the State, or the County, determines that the Contractor did not comply with or use the WIOA funds appropriately in accordance with WIOA and its implementing regulations, guidelines, rules

and/or other requirements (collectively referred to as “WIOA”) or that the Contractor failed to provide the services as set forth in this Contract, and the USDOL or other Federal agencies, or the State requires the County to complete the services under this Contract using County money, requires the County to repay the USDOL or other Federal agencies or the State and/or imposes any other penalty, the Contractor agrees to reimburse the County for the cost of completing the services and/or the amount of the repayment or penalty.

Funds allocated to the Contractor for Program Year 2019 are available for expenditure during the fiscal year 2020 (July 1, 2020 to June 30, 2021). Funds which are not expended by the Contractor in this two-year period must be returned to the County.



**EXHIBIT D**  
**GENERAL TERMS AND CONDITIONS**

1. **Representations and Conditions Precedent**

1.1 **Contract Subject to the Availability of Federal Funds.**

This Contract is funded wholly by federal funds as allocated by the State and is subject to the availability of such funds.

1.2 **Reporting Requirements.** The Contractor shall submit reports documenting the Contractor's services performed and actual expenses incurred. The Contractor shall return any unexpended funds to the County.

2. **Documents and Files**

2.1 **Ownership Rights and Copyright.** The County shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the Contractor pursuant to this Contract.

2.2 **Record Retention.** The Contractor and any subcontractors shall maintain the books and records that relate to the Contract, and any cost or pricing data for three (3) years from the date of final payment under the Contract. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, the Contractor and any subcontractors shall allow the County free and unrestricted access to such records, as permitted by law.

3. **Relationship Between Parties**

3.1 **Coordination of Services.** The Contractor shall maintain communications with the County at all stages of the Contractor's work and submit to the County for resolution monthly reports and any questions which may arise as to the performance of this Contract.

3.2 **Independent Contractor Status and Responsibilities**

3.2.1 In the performance of services required under this Contract, the Contractor is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the County shall have a general right to inspect work in progress to determine whether, in the County's

opinion, the services are being performed by the Contractor in compliance with this Contract.

3.2.2 The Contractor shall be responsible for the accuracy, completeness, and adequacy of the Contractor's performance under this Contract.

3.3 Personnel Requirements.

3.3.1 The Contractor shall secure, at the Contractor's own expense, all staffing sufficient to deliver services required to perform this Contract, unless otherwise provided in this Contract.

3.3.2 The Contractor shall ensure that the Contractor's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract.

3.4 Subcontracts and Assignments. The Contractor may, subject to the County's written mutual agreement, assign or subcontract any of the Contractor's duties, obligations, or interests under this Contract.

4. **Modification and Termination of Contract**

4.1 Modifications of Contract. This Contract may be modified pursuant to the terms below and as set forth in the Special Conditions.

4.1.1 In writing. Any modification, alteration, amendment, change, or extension or any term, provision, or condition permitted by this Contractor shall be made by written amendment to this Contract, signed by the Contractor and the County.

4.1.2 No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract shall be permitted.

4.2 Termination. This Contract may be terminated upon mutual written agreement of the parties or pursuant to the terms set forth in the Special Conditions.

5. **Miscellaneous Provisions**

5.1 Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or

interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Lihue, Hawai'i.

- 5.2 Entire Agreement. This Contract, including the documents incorporated therein, sets forth all of the agreements, conditions, understanding, promises, warranties, and representations between the County and the Provider relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the County and the Contractor other than as set forth or as referred to herein.
- 5.3 Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 5.4 Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one instrument.
- 5.5 Laws to be observed. The Contractor shall at all times observe, perform, and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Director in writing.

**EXHIBIT E**  
**SPECIAL CONDITIONS for the WIOA**

**A. REQUIREMENTS**

1. Statutory and Regulatory Requirements: The Contractor shall comply with the Cost Principles for Purchases of Health and Human Services set forth in Chapter 103F, and applicable federal cost principles listed in OMB Circulars A-87, A-21, A-122, which are made a part of this Contract by reference. The Contractor shall ensure that all services provided under this Contract are in accordance with WIOA and other applicable federal and State laws, regulations, policies, guidelines and instructions.
2. Nondiscrimination. In addition to the requirements stated in the General Terms and Conditions, the Contractor must provide initial and continuing notice that it does not discriminate on any prohibited grounds to: a) registrants and applicants, b) participants, c) applicants for employment and employees, d) unions or professional organizations that hold collective bargaining or professional agreements with the Contractor, e) subrecipients that receive WIOA Title I funds from the Contractor, and f) members of the public, including those with impaired vision or hearing, in accordance with 29 C.F.R. Part 38, as amended, and any other regulations that are issued relating to WIOA.
3. Monitoring: The Contractor shall monitor this award to ensure the proper use of funds and the achievement of WIOA goals. As Contractor is receiving Federal funds under this Contract, the Contractor shall comply with all regulations and requirements of USDOL or other Federal agencies regarding the use of WIOA funds, and complete all required forms and documents. The Contractor shall allow the USDOL or other Federal agencies and/or WDC representatives or their duly authorized representatives full access to the Contractor's records, reports, files, and other documents. The Contractor shall also allow the USDOL or other Federal agencies and/or WDC representatives or their duly authorized representatives to monitor the program, management and fiscal practices of the Contractor.
4. Reporting: The Contractor shall submit monthly fiscal reports and all services and participant reports as specified in the Contract, the documents incorporated therein, and as required by the WIOA and other applicable federal and state laws, regulations, and policies.
5. Subcontracts and Assignments: In addition to the requirements stated in the General Terms and Conditions, the Contractor shall apply the same requirements of this Contract to any assignee or subcontractor, including, but not limited to the requirement that the Contractor's assignee or subcontractor does not engage in discrimination that is prohibited by any applicable Federal, state, or county law. Prior to draw down of funds

by subcontractors, the subcontractor's budget documents may be subject to review and approval by the County and/or WDC.

- a. If the Contractor enters into a subcontract to provide any of the services under this Contract, the Contractor must include a provision in the subcontract requiring the subcontractor to comply with all regulations and requirements of the USDOL or other Federal agencies and/or WDC regarding the use of WIOA funds, and complete all required forms and documents.
  - b. The Contractor must also include a provision in its subcontracts that its subcontractors shall allow the USDOL or other Federal agencies and/or WDC representatives or their duly authorized representatives full access to the Contractor's records, reports, files and other documents and to allow the USDOL or other Federal agencies and/or WDC representatives or their duly authorized representatives to monitor the program, management and fiscal practices of the subcontract or.
6. Termination of Contract: In addition to the requirements stated in the General Terms and Conditions and the Additional Terms section of this Exhibit, if this Contract is terminated, all funds not obligated prior to the date of termination held by the Contractor under this Contract shall be immediately returned to the County.
7. Modifications of Contract: In addition to the requirements stated in the General Terms and Conditions, no amendment, modification, alteration, or change of any term, provision, or condition of this Contract may be made during the last quarter of the Contract, unless the County initiates the request for an amendment, modification, alteration, or change of any term, provision, or condition of this Contract. All modifications are not valid unless fully executed by all parties.
8. Buy American Requirements. To the greatest extent practicable, pursuant to Section 606 of the Consolidated Appropriations Act of 2017 (Public Law 115-31, Division E, Title VI), Contractor must comply with the Buy American Act, 41 U.S.C. §§ 8301-8303.
9. Limitation on Use of Funds. The Contractor shall not use funds under "Employment and Training" to pay salary and bonuses, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 113-128, Sec. (h) (1-3), Sec. 194 (10). States may establish a lower limit for salaries and bonuses. See OMB Circular 1-133.
10. Intellectual Property Rights: The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: a) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and b) any rights of copyright to which the Contractor, a subrecipient that receives WIOA Title I funds from the Contractor, or a contractor purchases ownership under an award (including but not

limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase a copyright in a work, where the Department has a license or rights of free use in such work, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income must be used in accordance with the provisions of this grant award and 2 CFR § 200.307.

If applicable, the following language needs to be on all products developed in whole or in part with grant funds:

“This workforce product was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The product was created by the recipient and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it.”

11. Special Requirements for Conferences and Conference Space: The Contractor must obtain prior approval from the WDC before holding any conference (which includes meeting, retreat, seminar, symposium, training activity or similar event held in either Federal or non-Federal space), or any activity related to holding a conference, including, but not limited to, obligating or expending USDOL funds, signing contracts for space or services, announcing USDOL's or the WDC's involvement in any conference, and using USDOL's or the WDC's official name or USDOL's or WDC's name or logo. The WDC and the County retain the right to obtain information from the Contractor about any conference that is funded in whole or in part with USDOL, WDC, or County funds. Information on the requirements and allowability of costs associated with conferences is provided in 2 CFR § 200.432.
12. Foreign Travel: Pursuant to WIOA section 181(e), no funds received to carry out an activity under WIOA subtitle B shall be used for foreign travel.
13. Personally Identifiable Information: Contractor must recognize and safeguard personally identifiable information except where disclosure is allowed by prior written approval of the County, WDC or by court order. Contractor must meet the requirements in Training and Employment Guidance letter (TEGL 39-11, Guidance on the Handling and Protection of Personally Identifiable Information), available at <http://wdr.doleta.gov/directives/corr doc.cfm?DOCN=7872>

14. Publicity: No funds provided under this grant shall be used for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress or any state or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government , except in presentation to the executive branch of any state or local government itself. Nor shall grant funds be used to pay the salary or expenses of any Contractor or agent acting for such Contractor, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive Order proposed or pending before the Congress, or any state government, state legislature, or local legislature body other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and administrative processes within the executive branch of that government.
15. Reporting of Waste, Fraud, and Abuse: Pursuant to Section 743 of the Consolidated Appropriations Act of 2017 (Public Law 115-31, Division E, Title VII), no entity receiving Federal funds may require employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
16. Requirement for Blocking Pornography: Pursuant to Section 521 of the Consolidated Appropriations Act of 2017 (Public Law 115-31, Division H, Title V), no Federal funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.
17. Requirement to Provide Certain Information in Public Communications: Pursuant to Section 505 of the Consolidated Appropriations Act of 2017 (Public Law 115- 31, Division H, Title V), when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all non-Federal entities receiving Federal funds shall clearly state:
  - a. The percentage of the total costs of the program or project which will be financed with Federal money;
  - b. The dollar amount of Federal funds for the project or program; and
  - c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

The requirements of this part are separate from those in the 2 CFR Part 200 and, when appropriate, both must be complied with.

18. Hotel-Motel Fire Safety: Pursuant to 15 U.S.C. § 2225a, the Contractor must ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with Federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (P.L. 101-391, as amended). Contractor may search the Hotel Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance or to find other information about the Act.
19. Privacy Act: Pursuant to Section 732 of the Consolidated Appropriations Act of 2017 (Public Law 115-31, Division E, Title VII), no funds can be used in contravention of the 5 USC § 552a (Privacy Act) or implementing regulations implementing of the Privacy Act.
20. Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the Contractor or a sub recipient that receives WIOA Title I funds from the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Contractor or a sub recipient that receives WIOA Title I funds from the Contractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
21. Prohibition on Providing Federal Funds to ACORN: Pursuant to Section 522 of the Consolidated Appropriations Act of 2017 (Public Law 115-31, Division H, Title V), funds may not be provided to the Association of Community Organizations for Reform Now (“ACORN”), or any of its affiliates, subsidiaries, allied organizations or successors.
22. Assurances and Certifications: The Contractor assures and certifies that it will fully comply with the following federal laws, regulations, and other requirements as they may be amended:
  - a. Public Law 113-128 (Workforce Innovation and Opportunity Act of 2014);
  - b. 81 Fed. Reg. 55791-56469, published by the Federal Register on August 19, 2016 (to be codified at 20 C.F.R. Parts 676,677,678, 603, 651-654, 658, 675, 679-688);
  - c. 29 C.F.R. Part 38 (Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act);
  - d. 29 CFR Part 93 (New Restrictions on Lobbying)



- e. 29 C.F.R. Part 94 (Government-wide Requirements for Drug-Free Workplace);
- f. 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)
- g. 2 C.F.R. Part 180 (Government-wide Debarment and Suspension)
- h. 2 C.F.R. Part 2900 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards);
- i. Standard Form 424 B (Assurances for Non-Construction Programs);
- j. 20 C.F.R. Part 1010 (Application of Priority of Service Covered Persons);
- k. Wagner-Peyser Act of 1933, as amended;
- l. Public Law 107-228, Jobs for Veterans Act
- m. 29 CFR Part 97 (Uniform Administrative Requirements for State and Local Governments)
- n. 29 CFR Part 95 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations)
- o. 29 CFR Part 37 (Nondiscrimination and Equal Opportunity)
- p. 29 CFR Part 96 (Audit Requirements for Grants, Contracts and Other Agreements)
- q. OMB Circular A-87 (Cost Principles for State and Local Governments)

**B. ASSURANCES – NON-CONSTRUCTION PROGRAMS:**

Funds provided under this grant must be expended in accordance with all applicable Federal statutes, regulations and policies, including those of the Workforce Innovation and Opportunity Act ("WIOA"), as amended, and the Wagner-Peyser Act, as amended.

NOTE: Certain of these may not be applicable to your project or program. If you have any questions please contact the awarding agency.

As the duly authorized representative of the Contractor, I certify that the Contractor:

1. Has the legal authority to apply for Federal Assistance and the institutional managerial and financial capability (including funds sufficient to pay the nonfederal share of project costs) to ensure proper planning, management and completion of the project described in the application.
2. Will give the federal awarding agency, the comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for Merit System of Personnel Administration (5 CFR 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin, (b) Title IX of the Education Amendment of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of handicaps; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) amended, relating to nondiscrimination on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee.3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) As amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirement of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (U.S.C. 1501-1508 and 73247328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a 7), the Copeland Act (40 U.S. C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40.327-333), regarding labor standards for federally assisted construction sub-agreements.
10. Will comply, if applicable, with Flood Insurance Purchase Requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO)/ 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et. seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the

Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a. 1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in the research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care , handling and treatment of warm blooded animals held for research, teaching, and other activities supports by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of State, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or sub awards under the award.
20. Will comply with the The Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., as amended, the Federal Property Management Regulations (see 41 CFR 102-76), and the Uniform Federal Accessibility Standards issued by GSA (see 36 CFR 1191, Appendixes C and D) set forth requirements to make facilities accessible to, and usable by, the physically handicapped and include minimum design standards. AU new facilities designed or constructed with grant support must comply with these requirements.

**C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTION.**

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. Will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the Contractor is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.
6. Will not, pursuant to Section 745 of the Consolidated Appropriations Act of 2017 (Public Law 115-31, Division E, Title VII), knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests the Government.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D. CERTIFICATION REGARDING LOBBYING – Certification for Contracts, Grants, Loans, and Cooperative Agreements.**

By accepting this grant, the signee hereby certifies, to the best of his or her knowledge and belief, that;

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid, to any person for influencing or attempting to influence an office or employee or any agency, a Member of Congress, an officer or employee of Congress, or employee of a Member of Congress in connection with the Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The signer shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**E. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS.**

The Contractor certifies that it will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employee about:
  - a. The dangers of drug abuse in the workplace;
  - b. The grantee's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in paragraph (1);
4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (4) (b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (4) (B), with respect to any employee who is so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a

Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), (6).

The Contractor shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

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County of Kauai, Lihue Civic Center

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4444 Rice Street, Suite 302

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Lihue, Kauai, HI 96766

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County of Kauai, Office of Economic Development

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4444 Rice Street, Suite 200

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Lihue, Kauai, HI 96766

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Check here ( ☐ ) if there are workplaces on file that are not identified here.

**F. CERTIFICATION OF NON-DELINQUENCY.**

Please check the appropriate statement:

☐ Not delinquent on any Federal Debt.

☐ Delinquent on any Federal Debt.

**G.NONDISCRIMINATION AND EQUAL OPPORTUNITY ASSURANCE.**



As a condition to the award of financial assistance from the Department of Labor under Title 1 of WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

14. Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I – financially assisted program or activity.
15. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, sex, religion and national origin;
16. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
17. The Age of Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
18. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I – Financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I – financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

**H. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006**

The Contractor assures compliance with the Funding Accountability and Transparency

Act of 2006, Public Law 109-282, as amended by section 6202 of Public Law 110-252 ("FFATA") and has established necessary processes and systems in place to comply with the reporting requirements of FFATA.

**I. ADDITIONAL TERMS**

1. Confidentiality of Material.

1.1 Proprietary or Confidential Information. All material given to or made available to the Contractor by virtue of this Contract that is identified as proprietary or confidential information shall be safeguarded by the Contractor and shall not be disclosed to any individual or organization without the prior written approval of the County.

1.2 Uniform Information Practices Act. All information, data, or other material provided by the Contractor to the County shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, and any other applicable law concerning information practices or confidentiality.

2. No Agency; Liability

2.1 No Agency. The Contractor and the Contractor's employees and agents are not by reason of this Contract, agents or employees of the County for any purpose. The Contractor and the Contractor's employees and agents shall not be entitled to claim or receive from the County any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees. Unless specifically authorized in writing by the County, the Contractor and the Contractor's employees and agents are not authorized to speak on behalf and no statement or admission made by the Contractor or the Contractor's employees or agents shall be attributed to the County, unless specifically adopted by the County in writing.

3. Termination. This Contract may be terminated upon mutual written agreement of the parties or pursuant to the terms set forth below

3.1 Termination for default and cause.

- (a) Termination for default and cause. If the Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the County may notify the Contractor in writing of the delay or non-performance, and if not cured in ten (10) days or any longer time specified in writing, the County may terminate the Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or other breach of the Contract. In the event of termination in whole or in part, the County may procure similar goods or services in a manner and upon terms deemed appropriate. The Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (b) Contractor's duties. Notwithstanding termination of the Contract and subject to any directions from the County, the Contractor shall take timely

and necessary action to protect and preserve property in the possession of the Contractor in which the County has an interest.

- (c) Compensation. Payment for completed goods and services delivered and accepted by the County shall be at the Contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the County; if the parties fail to agree, the County shall set an amount subject to the Contractor's rights under Chapter 3-126, HAR. The County may withhold from amounts due the Contractor such sums as the County deems to be necessary to protect the County against loss because of outstanding liens or claims of former lien holders and to reimburse the County for the excess costs incurred in procuring similar goods and services.
- (d) Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the Contractor has notified the County within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the County in its contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; or for delay due to reasons beyond the Contractor's control. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the Contract requirements.
- (e) Upon request of the Contractor, the County shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the County under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contracts, "Termination". As used in this Section, the term "subcontractor" means subcontractor at any tier.
- (f) Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

### 3.2 Termination for Convenience.

- (a) Termination for convenience. The County may, when the interests of the County so require, terminate this Contract in whole or in part, for

the convenience of the County. The County shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

- (b) Contractor's obligations. The Contractor shall incur no further obligations in connection with the terminated work, and on the dates set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the County's approval. The County may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the County. The County must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (c) Right to goods. The County may require the Contractor to transfer title and deliver to the County in the manner and to the extent directed: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract.
- (d) The Contractor shall, upon direction of the County, protect and preserve property in the possession of the Contractor in which the County has an interest. If the County does not exercise this right, the Contractor shall use best efforts to sell such goods and manufacturing materials. Use of this Section in no way implies that the County has breached the Contract by exercise of the termination for convenience clause.
- (e) Compensation:
  - (i) The Contractor shall submit a termination claim specifying the amounts due based on the termination for convenience together with cost or pricing data to the extent required by Subchapter 15, Chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the County may pay the Contractor, if at all, an amount set in accordance with subparagraph (iii) below.
  - (ii) The County and the Contractor may agree to settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by Subchapter 15, Chapter 3-122, HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the County, the proceeds of any sales of goods and manufacturing materials

under paragraph (c), above, and the Contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph (ii), the County shall pay the Contractor the following amounts, provided payments agreed to under subparagraph (ii) shall not duplicate payments under this paragraph for the following:

1) Contract prices for goods or services accepted under the Contract;

2) Costs incurred in preparation and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, that if it appears that the Contractor would have sustained a loss if the entire Contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

3) Subject to the prior approval of the County the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (b) of this clause. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with clause (2) of subparagraph (iii).

4) The total sum to be paid the Contractor under this subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under subparagraph (ii), and the Contract price of work not terminated.

iv) Cost claimed, agreed to, or established under subparagraphs (ii) and (iii) shall be in accordance with Chapter 3-123, HAR.

3.3 Termination for cost-reimbursement contracts. The only cost recognized as allowable shall be in accordance with the cost principles set forth in Chapter 3-123, HAR, provided that if a written determination is approved by the County, such cost principle may be modified by contract.

#### 4. Compliance with Laws

4.1 Licensing and Accreditation. As of the date of this Contract, the Contractor represents that it holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, rules, and regulations to provide the Services required under this Contract.

- 4.2 Persons with Disabilities. The Contractor shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101, et seq.), and the Rehabilitation Act (29 U.S.C. §701, et seq.).
- 4.3 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the Contractor, shall engage in any discrimination that is prohibited by any applicable Federal, state, or county law.

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**  
*(PLACEHOLDER, please complete insurance form available on Sharepoint)*

# Contract 212729 OCA Tracing#20-0708

Final Audit Report

2020-08-11

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| Created:        | 2020-08-11                                  |
| By:             | Hope Stem (hstem@kauai.gov)                 |
| Status:         | Signed                                      |
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